

1 MATTHEW A. RICHARDS (SBN 233166)

2 mrichards@nixonpeabody.com

3 DAWN N. VALENTINE (SBN 206486)

4 dvalentine@nixonpeabody.com

5 NIXON PEABODY LLP

6 One Embarcadero Center, 32nd Floor

7 San Francisco, CA 94111

8 Tel: 415-984-8200

9 Fax: 415-984-8300

10 Attorneys for Defendant

11 NEW HAMPSHIRE INSURANCE COMPANY

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 Southern Division
16

17 GUIDED DISCOVERIES, INC., a
18 California non-profit corporation,

19 Plaintiff,

20 vs.

21 NEW HAMPSHIRE INSURANCE
22 COMPANY, and DOES 1 through 10,
23 inclusive,

24 Defendants.
25
26
27
28

Case No.: 8:22-cv-01889-JWH-KES

**ORDER RE STIPULATED
PROTECTIVE ORDER**

1 **1. PURPOSES AND LIMITATIONS**

2 Discovery and disclosure activity in this action may involve production of
3 confidential, proprietary, or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. Accordingly, the Parties hereby stipulate to and petition the Court
6 to enter the following Stipulated Protective Order. The Parties acknowledge that
7 this Stipulated Protective Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The Parties further
11 acknowledge, as set forth in Section 13.3, below, that this Stipulated Protective
12 Order does not entitle them to file confidential information under seal; Civil Local
13 Rule 79-5 sets forth the procedures that must be followed and the standards that will
14 be applied when a party seeks permission from the Court to file material under seal.

15 **2. GOOD CAUSE STATEMENT**

16 This Action is likely to involve confidential information such as trade secrets
17 and other valuable research, development, commercial, financial, technical, and/or
18 proprietary information for which special protection from public disclosure and from
19 use for any purpose other than prosecution of this Action is warranted. Such
20 confidential and proprietary materials and information consist of, among other
21 things, confidential business information regarding the Parties' business practices,
22 or other confidential research, development, or commercial information (including
23 information implicating privacy rights of third parties), information otherwise
24 generally unavailable to the public, or which may be privileged or otherwise
25 protected from disclosure under state or federal statutes, court rules, case decisions,
26 or common law. Accordingly, to expedite the flow of information, to facilitate the
27 prompt resolution of disputes over confidentiality of discovery materials, to
28 adequately protect information the Parties are entitled to keep confidential, to ensure

1 that the Parties are permitted reasonable necessary uses of such material in
2 preparation for and in the conduct of trial, to address their handling at the end of the
3 litigation, and to serve the ends of justice, a protective order for such information is
4 justified in this matter. It is the intent of the Parties that information will not be
5 designated as confidential for tactical reasons and that nothing be so designated
6 without a good faith belief that it has been maintained in a confidential, non-public
7 manner, and there is good cause why it should not be part of the public record of this
8 case.

9 **3. DEFINITIONS**

10 A. Action: This pending federal lawsuit.

11 B. Challenging Party: A Party or Nonparty that challenges the designation
12 of information or items under this Stipulated Protective Order.

13 C. “CONFIDENTIAL” Information or Items: Information (regardless of
14 how it is generated, stored or maintained) or tangible things that qualify for
15 protection under Federal Rule of Civil Procedure 26(c), and as specified above
16 in the Good Cause Statement.

17 D. Counsel: Outside Counsel of Record and In-House Counsel (as well as
18 their support staff).

19 E. Designating Party: A Party or Nonparty that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL.”

22 F. Disclosure or Discovery Material: All items or information, regardless
23 of the medium or manner in which it is generated, stored, or maintained
24 (including, among other things, testimony, transcripts, and tangible things),
25 that is produced or generated in disclosures or responses to discovery in this
26 matter.

1 G. Expert: A person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to
3 serve as an expert witness or as a consultant in this Action.

4 H. In-House Counsel: Attorneys employed by a Party to this Action or an
5 affiliate of a Party to this Action who work in-house on the Party's legal
6 matters. In-House Counsel does not include Outside Counsel of Record or
7 any other outside counsel.

8 I. Nonparty: Any natural person, partnership, corporation, association,
9 or other legal entity not named as a Party to this action.

10 J. Outside Counsel of Record: Attorneys who are not employees of a
11 Party to this Action or any Party's affiliates, but are retained to represent or
12 advise a Party to this Action and have appeared in this Action on behalf of
13 that Party or are affiliated with a law firm which has appeared on behalf of
14 that Party, and includes support staff.

15 K. Party: Any party to this Action, including all of the officers, directors,
16 employees, claims personnel, claim administrators, and In-House Counsel of
17 the party. (Collectively, "Parties.")

18 L. Producing Party: A Party or Nonparty that produces Disclosure or
19 Discovery Material in this Action.

20 M. Professional Vendors and other Services Providers: Persons or entities
21 that (1) provide litigation support services (e.g., photocopying, videotaping,
22 translating, preparing exhibits or demonstrations, and organizing, storing, or
23 retrieving data in any form or medium), (2) provide consulting services, and
24 (3) were retained as Experts, and each of their employees and subcontractors.

25 N. Protected Material: Any Disclosure or Discovery Material that is
26 designated as "CONFIDENTIAL."

27 O. Receiving Party: A Party that receives Disclosure or Discovery
28 Material from a Producing Party.

1 **4. SCOPE**

2 The protections conferred by this Stipulated Protective Order cover not only
3 Protected Material but also (1) any information copied or extracted from Protected
4 Material, (2) all copies, excerpts, or compilations of Protected Material, and (3)
5 testimony, conversations, or presentations by Parties or their Counsel that might
6 reveal Protected Material. However, the protections conferred by this Stipulation
7 and Order do not cover the following information: (a) any information that is in the
8 public domain at the time of disclosure to a Receiving Party or becomes part of the
9 public domain after its disclosure to a Receiving Party as a result of publication not
10 involving a violation of this Stipulated Protective Order, including becoming part of
11 the public record through trial or otherwise; and (b) any information known to the
12 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
13 disclosure from a source who obtained the information lawfully and under no
14 obligation of confidentiality to the Designating Party.

15 Any use of Protected Material at trial shall be governed by a separate
16 agreement or order of the trial judge.

17 **5. DURATION**

18 Even after final disposition of this litigation, the confidentiality obligations
19 imposed by this Stipulated Protective Order shall remain in effect until a Designating
20 Party agrees otherwise in writing or a court order otherwise directs. Final disposition
21 shall be deemed to be the later of (1) dismissal of all claims and defenses in this
22 Action, with or without prejudice; and (2) final judgment herein after the completion
23 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
24 including the time limits for filing any motions or applications for extension of time
25 pursuant to applicable law.

26 ///

27 ///

28 ///

1 **6. DESIGNATING PROTECTED MATERIAL**

2 6.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Nonparty that designates information or items for protection
4 under this Stipulated Protective Order must take care to limit any such designation
5 to specific material that qualifies under the appropriate standards. The Designating
6 Party must designate for protection only those parts of material, documents, items,
7 or oral or written communications that qualify so that other portions of the material,
8 documents, items, or communications for which protection is not warranted are not
9 swept unjustifiably within the ambit of this Stipulated Protective Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber the case development process or to impose
13 unnecessary expenses and burdens on other parties) may expose the Designating
14 Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that are
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the mistaken designation.

18 6.2. Manner and Timing of Designations

19 Except as otherwise provided in this Stipulated Protective Order (*see e.g.*,
20 Section 6.2(a)), or as otherwise stipulated or ordered, Disclosure or Discovery
21 Material that qualified for protection under this Stipulated Protective Order must be
22 clearly so designated before the material is disclosed or produced. Designation in
23 conformity with this Stipulated Protective Order requires the following:

- 24 a) For information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions or other pretrial or
26 trial proceedings), that the Producing Party affix the legend
27 "CONFIDENTIAL" to each page that contains protected material. If
28 only a portion or portions of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Nonparty that makes original documents available for
4 inspection need not designate them for protection until after the
5 inspecting Party has indicated which documents it would like copied
6 and produced. During the inspection and before the designation, all of
7 the material made available for inspection shall be deemed
8 “CONFIDENTIAL.” After the inspecting Party has identified the
9 documents it wants copied and produced, the Producing Party must
10 determine which documents, or portions thereof, qualify for protection
11 under this Stipulated Protective Order. Then, before producing the
12 specified documents, the Producing Party must affix the
13 “CONFIDENTIAL legend” to each page that contains Protected
14 Material. If only a portion or portions of the material on a page qualifies
15 for protection, the Producing Party also must clearly identify the
16 protected portion(s) (e.g., by making appropriate markings in the
17 margins).

18 b) For testimony given in depositions, that the Designating Party identify
19 the Disclosure or Discovery Material on the record, before the close of
20 the deposition all protected testimony.

21 c) For information produced in a form other than documentary and for any
22 other tangible items, that the Producing Party affix in a prominent place
23 on the exterior of the container or containers in which the information
24 or item is stored the legend “CONFIDENTIAL.” If only a portion or
25 portions of the information or item warrants protection, the Producing
26 Party, to the extent practicable, shall identify the protected portion(s).

27 ///

28 ///

1 6.3 Inadvertent Failure to Designate

2 If timely corrected, an inadvertent failure to designate qualifying information
3 or items does not, standing alone, waive the Designating Party's right to secure
4 protection under this Stipulated Protective Order for such material. Upon timely
5 correction of a designation, the Receiving Party must make reasonable efforts to
6 assure that the material is treated in accordance with the provisions of this Stipulated
7 Protective Order.

8 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 7.1 Timing of Challenges

10 Any Party or Nonparty may challenge a designation of confidentiality at any
11 time that is consistent with the Court's Scheduling Order.

12 7.2 Meet and Confer.

13 The Challenging Party shall initiate the dispute resolution process under
14 Local Rule 37.1 et seq. or follow the procedures for informal, telephonic discovery
15 hearings on the Court's website.

16 7.3 Judicial Intervention.

17 The burden of persuasion in any such challenge proceeding shall be on the
18 Designating Party. Frivolous challenges, and those made for an improper purpose
19 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
20 expose the Challenging Party to sanctions. Unless the Designating Party has waived
21 or withdrawn the confidentiality designation, all parties shall continue to afford the
22 material in question the level of protection to which it is entitled under the Producing
23 Party's designation until the Court rules on the challenge.

24 **8. ACCESS TO AND USE OF PROTECTED MATERIALS**

25 8.1 Basic Principles

26 A Receiving Party may use Protected Material that is disclosed or produced
27 by another Party or by a Nonparty in connection with this Action only for
28 prosecuting, defending, or attempting to settle this Action. The Insurer Defendant

1 shall also be permitted to use Protected Material to evaluate or adjust the Plaintiff's
2 claim for insurance benefits if warranted. Such Protected Material may be disclosed
3 only to the categories of persons and under the conditions described in this Stipulated
4 Protective Order. When the Action reaches a final disposition, a Receiving Party
5 must comply with the provisions of Section 14 below.

6 Protected Material must be stored and maintained by a Receiving Party at a
7 location and in a secure manner that ensures that access is limited to the persons
8 authorized under this Order.

9 8.2 Disclosure of "CONFIDENTIAL" Information or Items

10 Unless otherwise ordered by the Court or permitted in writing by the
11 Designating Party, a Receiving Party may disclose any information or item
12 designated "CONFIDENTIAL" only to:

- 13 a) The Receiving Party's Outside Counsel of Record, as well as
14 employees and agents of said Outside Counsel of Record to whom it is
15 reasonably necessary to disclose the information for this Action;
- 16 b) The officers, directors, employees, In-House Counsel, claims
17 personnel, and claim administrators of the Receiving Party and its
18 parents/subsidiaries/affiliates;
- 19 c) Regulators, auditors, reinsurers, and retrocessionaires of the Receiving
20 Party;
- 21 d) Experts of the Receiving Party to whom disclosure is reasonably
22 necessary for this Action and who have signed the "Acknowledgment
23 and Agreement to Be Bound" (Exhibit A);
- 24 e) The Court and its personnel;
- 25 f) Court reporters and their staff;
- 26 g) Professional jury or trial consultants, mock jurors, Professional
27 Vendors, and other Services Providers to whom disclosure is
28

1 reasonably necessary for this Action and who have signed the
 2 “Acknowledgment and Agreement to be Bound” (Exhibit A);

3 h) The author or recipient of a document containing the information or a
 4 custodian or other person who otherwise possessed or knew the
 5 information;

6 i) During their depositions, witnesses in the Action to whom disclosure is
 7 reasonably necessary and who have signed the “Acknowledgement and
 8 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
 9 Designating Party or ordered by the Court. Pages of transcribed
 10 deposition testimony or exhibits to depositions that reveal Protected
 11 Material must be separately bound by the court reporter and may not be
 12 disclosed to anyone except as permitted under this Stipulated Protective
 13 Order; and

14 j) Any mediator or settlement officer, and their supporting personnel,
 15 mutually agreed upon by the Parties engaged in settlement discussions.

16 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 17 **PRODUCED IN OTHER LITIGATION**

18 If a Party is served with a subpoena or a court order issued in other litigation
 19 that compels disclosure of any information or items designated in this Action as
 20 “CONFIDENTIAL,” that Party must:

21 a) Promptly notify in writing the Designating Party. Such notification
 22 shall include a copy of the subpoena or court order;

23 b) Promptly notify in writing the party who caused the subpoena or order
 24 to issue in the other litigation that some or all of the material covered
 25 by the subpoena or order is subject to this Stipulated Protective Order.
 26 Such notification shall include a copy of this Stipulated Protective
 27 Order; and

1 c) Cooperate with respect to all reasonable procedures sought to be
2 pursued by the Designating Party whose Protected Material may be
3 affected.

4 If the Designating Party timely seeks a protective order, the Party served with
5 the subpoena or court order shall not produce any information designated in this
6 action as “CONFIDENTIAL” before a determination by the Court from which the
7 subpoena or order issued, unless the Party has obtained the Designating Party’s
8 permission. The Designating Party shall bear the burden and expense of seeking
9 protection in that court of its confidential material and nothing in these provisions
10 should be construed as authorizing or encouraging a Receiving Party in this Action
11 to disobey a lawful directive from another court.

12 **10. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE**
13 **PRODUCED IN THIS LITIGATION**

14 10.1 Application

15 The terms of this Stipulated Protective Order are applicable to information
16 produced by a Nonparty in this Action and designated as “CONFIDENTIAL.” Such
17 information produced by Nonparties in connection with this litigation is protected
18 by the remedies and relief provided by this Stipulated Protective Order. Nothing in
19 these provisions should be construed as prohibiting a Nonparty from seeking
20 additional protections.

21 10.2 Notification

22 In the event that a Party is required, by a valid discovery request, to produce
23 a Nonparty’s confidential information in its possession, and the Party is subject to
24 an agreement with the Nonparty not to produce the Nonparty’s confidential
25 information, then the Party shall:

26 a) Promptly notify in writing the Requesting Party and the Nonparty that
27 some or all of the information requested is subject to a confidentiality
28 agreement with a Nonparty;

b) Promptly provide the Nonparty with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

c) Make the information requested available for inspection by the Nonparty, if requested.

10.3 Conditions of Production.

If the Nonparty fails to seek a protective order from this Court within fourteen (14) days after receiving the notice and accompanying information, the Receiving Party may produce the Nonparty's confidential information responsive to the discovery request. If the Nonparty timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Nonparty before a determination by the Court. Absent a court order to the contrary, the Nonparty shall bear the burden and expense of seeking protection in this Court of its Protected Material.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party immediately must (1) notify in writing the Designating Party of the unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies of the Protected Material, (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Stipulated Protective Order, and (4) request such person or persons to execute the "Acknowledgment and Agreement to be Bound" (Exhibit A).

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
2 may be established in an e-discovery order that provides for production without prior
3 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as
4 the Parties reach an agreement on the effect of disclosure of a communication or
5 information covered by the attorney-client privilege or work product protection, the
6 Parties may incorporate their agreement in the Stipulated Protective Order submitted
7 to the Court.

8 **13. MISCELLANEOUS**

9 **13.1 Right to Further Relief**

10 Nothing in this Stipulated Protective Order abridges the right of any person to
11 seek its modification by the Court in the future.

12 **13.2 Right to Assert Other Objections**

13 By stipulating to the entry of this Stipulated Protective Order, no Party waives
14 any right it otherwise would have to object to disclosing or producing any
15 information or item on any ground not addressed in this Stipulated Protective Order.
16 Similarly, no Party waives any right to object on any ground to use in evidence of
17 any of the material covered by this Stipulated Protective Order.

18 **14. FILING PROTECTED MATERIAL**

19 A Party that seeks to file under seal any Protected Material must comply
20 with Civil Local Rule 79-5. Protected Material may only be filed under seal
21 pursuant to a court order authorizing the sealing of the specific Protected Material
22 at issue. If a Receiving Party's request to file Protected Material under seal
23 pursuant to Civil Local Rule 79-5(d) is denied by the Court, then the Receiving
24 Party may file the information in the public record pursuant to Civil Local Rule
25 79-5(e) unless otherwise instructed by the Court.

26 **15. FINAL DISPOSITION**

27 Within 60 days after the final disposition of this Action, each Receiving Party
28 must return all Protected Material to the Producing Party, destroy such material, or

1 continue to maintain Protected Material in accordance with the terms of this Order
2 and as necessary to comply with law and regulation. As used in this subdivision,
3 “all Protected Material” includes all copies, abstracts, compilations, summaries, and
4 any other format reproducing or capturing any of the Protected Material.

5 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

6
7 Dated: June 15, 2023

BUCHALTER

8
9 By: /s/ Adam P. Smith

10 Phillip Chan
11 Adam P. Smith
12 Attorneys for Plaintiff

13
14 Dated: June 15, 2023

NIXON PEABODY LLP

15 By: /s/ Dawn N. Valentine

16 Matthew A. Richards
17 Dawn N. Valentine
18 Attorneys for Defendant

19 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

20
21
22 Dated: June 16, 2023



23 Karen E. Scott
24 United States Magistrate Judge
25
26
27
28

ATTESTATION

Pursuant to L.R. 5-4.3.4, the undersigned hereby attests that all signatories listed above, and on whose behalf this Stipulation is submitted, concur in and have authorized the filing of this Stipulation.

/s/ Lillian Cardona
Lillian Cardona

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
_____ [print or type full address], declare under penalty of perjury that I have read
in its entirety and understand the Stipulated Protective Order that was issued by the
United States District Court for the Central District of California on [DATE] in the
case of *Guided Discoveries, Inc. v. New Hampshire Insurance Company, et al.*, Case
No. 8:22-cv-01889-JWH-KES. I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____